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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2012-272

**KIM MARIE MARKIEWICZ
100 Manatee Crossing #108
Daytona Beach, FL 32119**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Registered Nurse License No. 539643

RESPONDENT

FINDINGS OF FACT

1. On or about October 31, 2011, Complainant Louise R. Bailey, M.Ed.,RN, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2012-272 against Kim Marie Markiewicz (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

2. On or about January 2, 1998, the Board of Registered Nursing (Board) issued Registered Nurse License No. 539643 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2013, unless renewed.

3. On or about October 31, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2012-272, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record which, pursuant to Business and Professions Code section 136 and/Title 16, California Code of Regulation, section 1409.1, is required to be reported and maintained with the Board, which was and is:

100 Manatee Crossing #108

Daytona Beach, FL 32119.

1 4. Service of the Accusation was effective as a matter of law under the provisions of
2 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
3 124.

4 5. On or about November 8, 2011, Respondent signed and returned a Notice of Defense
5 requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's
6 address of record and it informed her that an administrative hearing in this matter was scheduled
7 for May 30, 2012. Respondent failed to appear at that hearing.

8 6. Government Code section 11506 states, in pertinent part:

9 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
10 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
11 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
12 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

13 7. California Government Code section 11520 states, in pertinent part:

14 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
15 agency may take action based upon the respondent's express admissions or upon other evidence
16 and affidavits may be used as evidence without any notice to respondent.

17 8. Pursuant to its authority under Government Code section 11520, the Board finds
18 Respondent is in default. The Board will take action without further hearing and, based on
19 Accusation No. 2012-272 and the documents contained in Default Decision Investigatory
20 Evidence Packet in this matter which includes:

21 Exhibit 1: Pleadings offered for jurisdictional purposes; Accusation No. 2012-272,
22 Statement to Respondent, Notice of Defense (two blank copies), Request
23 for Discovery and Discovery Statutes (Government Code sections
24 11507.5, 11507.6 and 11507.7), proof of service; mail receipt; Notice of
25 Defense and Notice of Hearing;

26 Exhibit 2: License History Certification for Kim Marie Markiewicz, Registered
27 Nurse License No. 539643;

28 Exhibit 3: Out of State Discipline (Louisiana and Nevada Board of Nursing);

1 Exhibit 4: Affidavit of Kami Pratab;

2 Exhibit 5: Declaration of costs by Office of the Attorney General for prosecution of
3 Case No. 2012-272.

4 The Board finds that the charges and allegations in Accusation No. 2012-272 are separately and
5 severally true and correct by clear and convincing evidence.

6 9. Taking official notice of the Declaration of Costs by the Office of the Attorney
7 General contained in the Default Decision Investigatory Evidence Packet, pursuant to the
8 Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for
9 Investigation and Enforcement in connection with the Accusation are \$3,890.00 as of August 14,
10 2012.

11 DETERMINATION OF ISSUES

12 1. Based on the foregoing findings of fact, Respondent Kim Marie Markiewicz has
13 subjected her following license(s) to discipline:

14 a. Registered Nurse License No. 539643

15 2. The agency has jurisdiction to adjudicate this case by default.

16 3. The Board of Registered Nursing is authorized to revoke Respondent's license(s)
17 based upon the following violations alleged in the Accusation, which are supported by the
18 evidence contained in the Default Decision Investigatory Evidence Packet in this case.

19 a. Violation of Business and Professions Code section 2761(a)(4) - Disciplinary
20 action by another State Board of Nursing.

21 b. Violation of Business and Professions Code section 2761(b) - Procuring license
22 by fraud, misrepresentation or mistake

23 c. Violation of Business and Professions Code sect 2761(e) - Making or giving
24 any false statement or information in connection with the application for
25 issuance of a certificate or license.

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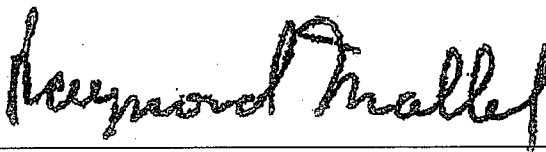
ORDER

IT IS SO ORDERED that Registered Nurse License No. 539643, heretofore issued to Respondent Kim Marie Markiewicz, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on January 14, 2013

It is so ORDERED December 14, 2012



Board of Registered Nursing
Department of Consumer Affairs
State of California

Attachment:

Exhibit A: Accusation No. 2012-272

Exhibit A

Accusation No. 2012-272

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SUSANA A. GONZALES
Deputy Attorney General
4 State Bar No. 253027
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2221
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2012-272

13 **KIM MARIE MARKIEWICZ**
100 Manatee Crossing, #108
Daytona Beach, FL 32119
14 Registered Nurse License No. 539643

ACCUSATION

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about January 2, 1998, the Board of Registered Nursing issued Registered
23 Nurse License Number 539643 to Kim Marie Markiewicz (Respondent). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought in this Accusation
25 and will expire on October 31, 2013, unless renewed.

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1 licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that
2 action.”

3 ...

4 “(b) Procuring his or her license by fraud, misrepresentation, or mistake.

5 ...

6 “(e) Making or giving any false statement or information in connection with the application
7 for certificate or license.”

8 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

9 8. Code section 4021 states:

10 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
11 11053) of Division 10 of the Health and Safety Code.”

12 9. Code section 4022 provides:

13 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in
14 humans or animals, and includes the following:

15 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
16 prescription,’ ‘Rx only’ or words of similar import.

17 “(b) Any device that bears the statement: ‘Caution: federal law restricts this device to sale
18 by or on the order of a _____,’ ‘Rx only,’ or words of similar import . . .

19 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
20 prescription or furnished pursuant to Section 4006.”

21 10. Ativan is a brand name for Lorazepam, a Schedule IV controlled substance under
22 Health and Safety Code section 11057, subdivision (d)(16), and a dangerous drug pursuant to
23 Code section 4022. Ativan is an anti-anxiety drug primarily used for the treatment of anxiety,
24 tension, and anxiety with depression, insomnia, and acute alcohol withdraw symptoms.

25 11. Cocaine is a Schedule II controlled substance and narcotic as designated by Health
26 and Safety Code section 11055, subdivision (b)(6), and a dangerous drug under Code section
27 4022.

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1 16. Respondent has subjected her registered nurse license to disciplinary action under
2 Code section 2761, subdivision (a)(4), in that on or about May 19, 2010, the Nevada State Board
3 of Nursing (Nevada Board) moved to ratify staff denial of Respondent's application as a
4 registered nurse based upon Respondent's violation of Nevada statutes pertaining to fraudulent
5 application and action in another state. The Nevada Board's action also invalidated any
6 temporary license issued to Respondent to practice in the State of Nevada.

7 THIRD CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct – Misrepresentation in Procuring License)
9 (Bus. & Prof. Code § 2761, subd. (b))

10 17. Complainant realleges the allegations contained in paragraphs 13 and 14 above, and
11 incorporates them by reference as if fully set forth.

12 18. Respondent has subjected her registered nurse license to disciplinary action under
13 Code section 2761, subdivision (b), in that she procured her nursing certification from the Board
14 through misrepresentation. The circumstances are as follows:

15 19. On or about August 3, 2009, Respondent submitted a Renewal Application
16 (Application) under penalty of perjury to the California Board of Registered Nursing. In her
17 Application, Respondent specifically denied having had a license disciplined by a government
18 agency or other disciplinary body since she last renewed her license. Respondent's denial of
19 prior discipline in her Application constitutes a misrepresentation in procuring the renewal of her
20 California registered nurse license given the disciplinary order entered by the Louisiana Board on
21 or about June 19, 2008, as set forth above in paragraphs 13 and 14.

22 FOURTH CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct – False Statement or Information in Application)
24 (Bus. & Prof. Code § 2761, subd. (e))

25 20. Complainant realleges the allegations contained in paragraphs 13, 14, and 19 above,
26 and incorporates them by reference as if fully set forth.

27 21. Respondent has subjected her registered nurse license to disciplinary action under
28 Code section 2761, subdivision (e), in that she made or gave false statements and information to

1 the California Board in connection with her application for renewal of her California registered
2 nurse license. The circumstances are set forth above in paragraphs 13, 14, and 19.

3 PRAYER


4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Registered Nursing issue a decision:

6 1. Revoking or suspending Registered Nurse License Number 539643, issued to Kim
7 Marie Markiewicz;

8 2. Ordering Kim Marie Markiewicz to pay the Board of Registered Nursing the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3;

11 3. Taking such other and further action as deemed necessary and proper.
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14 DATED: October 31, 2011


for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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